

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FRANK M. PECK,
Plaintiff,
vs.
NEVADA DEPARTMENT
OF CORRECTIONS, *et al.*,
Defendants.

2:12-CV-00898-JCM-NJK

ORDER

17 Presently before the court are the report and recommendation of Magistrate Judge Koppe (doc.
18 # 39) regarding a motion to enforce settlement filed by defendants Renee Baker, Cheryl Burson, Brian
19 Connell, James G. Cox, William Humphrey, E.K. McDaniel, and Tasheena Sandoval (“defendants”)
20 (doc. # 36). *Pro se* plaintiff Frank M. Peck filed objections (doc. # 40) to which defendants responded
21 (doc. # 42). Plaintiff also filed a reply to defendants’ response. (Doc. # 43).

22 Also before the court is plaintiff's motion for an evidentiary hearing. (Doc. # 41).

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1 **I. Background**2 **A. Facts**

3 On January 4, 2013, plaintiff and defendants participated in a mediation conference. (Doc. # 26).
 4 After approximately three hours of arms-length negotiations, the parties orally agreed to a settlement.
 5 *Id.* Plaintiff agreed to dismiss his claims with prejudice, and in exchange defendants agreed to pay
 6 plaintiff one hundred dollars and to discharge a ten dollar and fifty cent balance owed by plaintiff to the
 7 Nevada Department of Corrections. *Id.*

8 Mediator J. Michael McGroarty advised plaintiff that the deputy attorney general would prepare
 9 a written settlement agreement to be signed by the parties, as well as a stipulation and order to dismiss
 10 the case. McGroarty further advised plaintiff that although a written agreement would be forthcoming,
 11 the settlement was binding *at that moment* and was therefore enforceable with plaintiff's consent.

12 After receiving the written settlement agreement and stipulation of dismissal, plaintiff refused
 13 to execute the documents. Defendants now seek to enforce the settlement that was agreed upon during
 14 the mediation conference. (Doc. # 36).

15 **B. Report & recommendation and objections**

16 Magistrate Koppe issued a report and recommendation finding that plaintiff repeatedly
 17 acknowledged, prior to orally giving consent, that he would be bound by the agreement, and
 18 recommending that defendants' motion to enforce settlement be granted. (Doc. #39).

19 Plaintiff's objections to the report allege that he was unethically befriended by Mediator
 20 McGroarty and misled by defendants. (Doc. # 40).

21 **II. Legal standard**

22 A party may file specific written objections to the findings and recommendations of a United
 23 States magistrate judge made pursuant to Local Rule IB 1–4. 28 U.S.C. § 636(b)(1)(B); LR IB 3–2.
 24 Upon the filing of such objections, the district court must make a de novo determination of those
 25 portions of the report to which objections are made. 28 U.S.C. § 636(b)(1)(C); LR IB 3–2(b). The district
 26 court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the

1 magistrate judge. *Id.*

2 However, the district court need not conduct a hearing to satisfy the statutory requirement that
 3 the district court make a “de novo determination.” *United States v. Raddatz*, 447 U.S. 667, 674 (1980)
 4 (observing that there is “nothing in the legislative history of the statute to support the contention that the
 5 judge is required to rehear the contested testimony in order to carry out the statutory command to make
 6 the required ‘determination’”).

7 **III. Discussion**

8 Plaintiff’s contention that he should not be bound to the settlement agreement because he was
 9 befriended by the mediator is without merit. A mediator’s role in a case such as this is to provide an
 10 unbiased opinion as to the likely outcome and encourage all parties to come to a mutually agreeable
 11 solution. The court is not inclined to rule that an agreement should be set aside merely because a
 12 mediator was friendly. Indeed, the presence of a mediator who is not antagonistic to the parties
 13 attempting to reach a settlement encourages the efficient resolution of cases and is beneficial to the
 14 justice system.

15 Plaintiff argues that defendants’ proposed written settlement agreement is inaccurate because
 16 “there was no mention of NDOC not admitting violating [plaintiff’s] constitutional rights” during the
 17 mediation conference. (Doc. # 40 p. 2). However, the record certainly does not show that defendants,
 18 at any time, agreed to admit that any violation of plaintiff’s constitutional rights took place. The written
 19 agreement simply clarifies that defendants do not admit to any wrongdoing, but agree to pay plaintiff
 20 the designated amount in exchange for the dismissal of his claims. (Doc. # 36-3). Therefore, these
 21 statements do not contradict or exceed the agreement that was reached during the mediation conference.

22 Other than the statements clarifying that defendants do not admit wrongdoing, plaintiff does
 23 object to any specific terms in the written agreement, nor does he allege that defendants made any
 24 specific misrepresentations that induced his consent.¹ Additionally, plaintiff does not clarify how

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 26 ¹ Plaintiff’s objections contain a reference to an unnamed “document” that defendants’ counsel incorrectly told him
 “was not a legal document.” (Doc. # 40). However, without a claim that plaintiff was misled as to the document’s contents
 or impact upon the pending litigation, the court cannot find that these facts void his clear statements of consent to the

1 additional evidence could support a finding that he was coerced or misled during the mediation
2 conference. Accordingly, the court will adopt Magistrate Judge Koppe's recommendation to grant
3 defendants' motion to enforce settlement and will deny plaintiff's motion for an evidentiary hearing.

4 **IV. Conclusion**

5 After having conducted a de novo review of those portions of the report objected to,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Magistrate Judge Koppe's
7 report and recommendation (doc. # 39) regarding defendants' motion to enforce settlement be, and the
8 same hereby is, ADOPTED in its entirety.

9 IT IS FURTHER ORDERED that defendants' motion to enforce settlement (doc. # 36) is
10 GRANTED.

11 IT IS FURTHER ORDERED that plaintiff's motion for an evidentiary hearing (doc. # 41) is
12 DENIED.

13 DATED March 14, 2014.

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16 UNITED STATES DISTRICT JUDGE

27 _____
28 settlement agreement.